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SENATE BILL 813

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; EXTENDING THE RENEWABLE ENERGY PRODUCTION  
TAX CREDIT TO INCLUDE BIOMASS AS A QUALIFIED ENERGY RESOURCE;  
CHANGING ELIGIBILITY REQUIREMENTS FOR CERTIFICATION; PROVIDING  
FOR THE SALE, EXCHANGE OR TRANSFER OF THE CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
Chapter 59, Section 1) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. A taxpayer that owns a qualified energy  
generator certified by the energy, minerals and natural  
resources department is eligible for a tax credit in an amount  
equal to one cent (\$.01) per kilowatt-hour for the first four  
hundred thousand megawatt-hours of electricity produced by the

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1 qualified energy generator using a qualified energy resource in  
2 the taxable year. A taxpayer shall be eligible for the tax  
3 credit for ten consecutive years, beginning on the date the  
4 qualified energy generator begins producing electricity. The  
5 tax credit provided in this section may be referred to as the  
6 "renewable energy production tax credit".

7 B. As used in this section:

8 (1) "biomass" means agricultural or animal  
9 waste; thinnings from trees less than fifteen inches in  
10 diameter, slash and brush; lumbermill or sawmill residues; and  
11 salt cedar and other phreatophytes removed from watersheds or  
12 river basins;

13 [~~(1)~~] (2) "qualified energy generator" means a  
14 facility with at least twenty megawatts generating capacity  
15 located in New Mexico that produces electricity using a  
16 qualified energy resource and that sells that electricity to an  
17 unrelated person; and

18 [~~(2)~~] (3) "qualified energy resource" means a  
19 resource that generates electrical energy by means of a  
20 fluidized bed technology or similar low-emissions technology or  
21 a zero-emissions generation technology that has substantial  
22 long-term production potential and that uses only the following  
23 energy sources:

- 24 (a) solar light;
- 25 (b) solar heat; [~~or~~]

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- (c) wind; or
- (d) biomass.

C. A taxpayer may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the applicant is a qualified energy generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed [~~eight hundred thousand~~] two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the applicant is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

D. To claim a renewable energy production tax credit, a taxpayer that has been certified as eligible pursuant

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1 to Subsection C of this section shall submit to the taxation  
2 and revenue department the certificate issued by the energy,  
3 minerals and natural resources department, documentation of the  
4 amount of electricity produced by the taxpayer's facility in  
5 the taxable year and any other information the taxation and  
6 revenue department may require to determine the amount of the  
7 tax credit due the taxpayer. If all the requirements of this  
8 section have been complied with, the taxation and revenue  
9 department shall issue to the taxpayer a document granting a  
10 tax credit for the qualifying period as provided in this  
11 section. The tax credit document shall be numbered for  
12 identification and declare its date of issuance and the amount  
13 of the renewable energy production tax credit. Such tax credit  
14 documents may be sold, exchanged or otherwise transferred and  
15 may be carried forward for a period of five years from the date  
16 of the sale, exchange or transfer. The parties shall notify  
17 the department of the sale, exchange or transfer within ten  
18 days of the sales, exchange or transfer.

19 E. Once a taxpayer has been granted a renewable  
20 energy production tax credit for a given facility, that  
21 taxpayer shall be allowed to retain its original date of  
22 application for tax credits for that facility until either the  
23 facility goes out of production for more than six consecutive  
24 months in a year or until the facility's ten-year eligibility  
25 has expired.

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1 F. ~~[The renewable energy production tax credit may~~  
2 ~~be deducted from]~~ The holder of the tax credit document may  
3 apply all or a portion of the renewable energy production tax  
4 credit against the taxpayer's New Mexico corporate income tax  
5 liability for the taxable year. If the amount of the tax  
6 credit claimed exceeds the taxpayer's corporate income tax  
7 liability, the excess may be carried forward for up to five  
8 consecutive taxable years. "

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